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FITBIT INC., JAMES PARK, WILLIAM R. ZERELLA,
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STEVEN MURRAY, and CHRISTOPHER PAISLEY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHARLES BLACKBURN, derivatively on behalf
of FITBIT, INC.,

Plaintiff,

v.

JAMES PARK, WILLIAM R. ZERELLA,
ERIC N. FRIEDMAN, JONATHAN D.
CALLAGHAN, STEVEN MURRAY, and
CHRISTOPHER PAISLEY,

Defendants,

and

FITBIT, INC.,

Nominal Defendant.

Case No. 3:16-cv-06558-SI

**STIPULATION AND [PROPOSED]
ORDER STAYING ACTION
PENDING RESOLUTION OF
FEDERAL SECURITIES CLASS
ACTION**

Compl. Filed: Nov. 11, 2016

Judge: Honorable Susan Illston

Ctrm: 1 – 17th Floor

1 Nominal Defendant Fitbit, Inc. (“Fitbit”), defendants James Park, William R. Zerella,
2 Eric N. Friedman, Jonathan D. Callaghan, Steven Murray, Christopher Paisley (together with
3 Fitbit, “Defendants”), and Plaintiff Charles Blackburn (“Plaintiff” and together with Defendants,
4 the “Parties”), by and through their undersigned counsel, hereby submit this Stipulation and
5 [Proposed] Order to stay this shareholder derivative action (the “Derivative Litigation”) in light of
6 the following:

7 WHEREAS, on November 11, 2016, Plaintiff filed his Verified Shareholder Derivative
8 Complaint for Breach of Fiduciary Duties, Unjust Enrichment and Violations of Section 14(a) of
9 the Securities Exchange Act of 1934 (the “Derivative Complaint”);

10 WHEREAS, the Court scheduled an initial case management conference in the Derivative
11 Litigation for February 17, 2017;

12 WHEREAS, Defendants have accepted service of the Derivative Complaint with a full
13 reservation of rights;

14 WHEREAS, Defendants have not yet filed a responsive pleading in the Derivative
15 Litigation;

16 WHEREAS, the Derivative Complaint asserts claims against Defendants, each of whom is
17 named as a defendant in an earlier-filed securities class action captioned *Robb v. Fitbit, Inc., et*
18 *al.*, Case No. 3:16-cv-00151 (the “Federal Securities Class Action”), which is currently pending
19 before the Court;

20 WHEREAS, on October 26, 2016, the Court denied defendants’ motions to dismiss the
21 Federal Securities Class Action;

22 WHEREAS, in light of the similarities among the allegations in the Derivative Litigation
23 and the allegations in the Federal Securities Class Action, the Parties have reached an agreement
24 that, to conserve party and judicial resources, all proceedings and deadlines in the Derivative
25 Litigation shall be stayed pending resolution of the Federal Securities Class Action, whether by
26 dismissal with prejudice or entry of final judgment.

27 THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

28 1. All proceedings shall be stayed, including the initial case management conference,

1 and all deadlines deferred, pending resolution of the Federal Securities Class Action, whether by
2 dismissal with prejudice or entry of final judgment.

3 2. The Parties shall jointly file a status update in the Derivative Litigation 180 days
4 from entry of this Order, and every 180 days thereafter until the stay is lifted or the Federal
5 Securities Class Action is resolved.

6 3. Any Party may cause the stay to be lifted upon 30 days' written notice, after which
7 point the Parties will meet and confer about the timing of dispositive motions and file a joint
8 stipulation proposing deadlines for those motions or, if the Parties are unable to reach agreement,
9 setting forth their respective positions on timing.

10 4. Notwithstanding the stipulated stay, Plaintiff shall be permitted to file an amended
11 complaint while the stay remains in place. Defendants shall be under no obligation to respond to
12 any complaint while the stay is in effect.

13 5. The Parties shall meet and confer within 30 days of the resolution of the Federal
14 Securities Class Action regarding next steps in the Derivative Litigation and submit a joint status
15 report to the Court thereafter.

16 6. By entering into this Stipulation, the Parties agree that their rights shall not be
17 prejudiced in any way and Defendants do not waive and expressly reserve the right to assert any
18 defenses that they or any of them may have, including but not limited to defenses as to forum,
19 venue, or jurisdiction.

20 **IT IS SO STIPULATED.**

1 Dated: January 4, 2017

BRODSKY & SMITH, LLC
EVAN J. SMITH (SBN 242352)
RYAN P. CARDONA (SBN 302113)

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4 */s/ Evan J. Smith*

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27 Dated: January 4, 2017

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PHILIP BESIROF
RYAN M. KEATS

/s/ Philip Besirof

PHILIP BESIROF

Attorneys for Defendants

1 **[PROPOSED] ORDER**

2 Having reviewed the Parties' Stipulation and for good cause shown, the Court hereby
3 orders that:

4 1. All proceedings shall be stayed, including the initial case management conference,
5 and all deadlines deferred, pending resolution of the Federal Securities Class Action, whether by
6 dismissal with prejudice or entry of final judgment.

7 2. The Parties shall jointly file a status update in the Derivative Litigation 180 days
8 from entry of this Order, and every 180 days thereafter until the stay is lifted or the Federal
9 Securities Class Action is resolved.

10 3. Either Party may cause the stay to be lifted upon 30 days' written notice, after
11 which point the Parties will meet and confer about the timing of dispositive motions and file a
12 joint stipulation proposing deadlines for those motions or, if the Parties are unable to reach
13 agreement, setting forth their respective positions on timing.

14 4. Notwithstanding the stipulated stay, Plaintiff shall be permitted to file an amended
15 complaint while the stay remains in place. Defendants shall be under no obligation to respond to
16 any complaint while the stay is in effect.

17 5. The Parties shall meet and confer within 30 days of the resolution of the Federal
18 Securities Class Action regarding next steps in the Derivative Litigation and submit a joint status
19 report to the Court thereafter.

20 6. By entering into this Stipulation, the Parties' rights shall not be prejudiced in any
21 way and Defendants do not waive and expressly reserve the right to assert any defenses that they
22 or any of them may have, including but not limited to defenses as to forum, venue, or jurisdiction.

23
24 **IT IS SO ORDERED.**

25
26 Dated: _____
27 The Honorable Susan Illston
28 United States District Judge

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/s/ Philip Besirof